AIR WAR COLLEGE

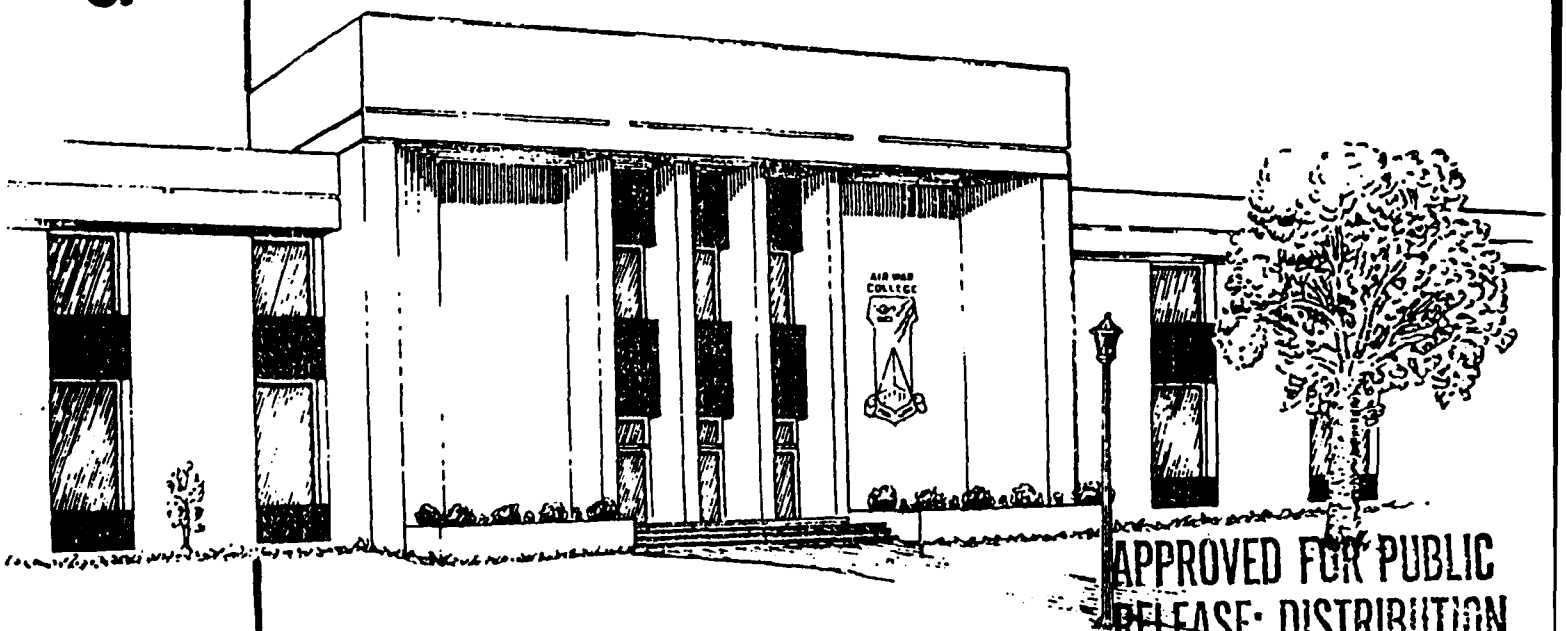
RESEARCH REPORT

WOMEN IN COMBAT--WHEN THE BEST MAN

FOR THE JOB IS A WOMAN

LIEUTENANT COLONEL RICHARD A. McDONALD

1991



AIR UNIVERSITY
UNITED STATES AIR FORCE
MAXWELL AIR FORCE BASE, ALABAMA

AIR WAR COLLEGE

AIR UNIVERSITY

WOMEN IN COMBAT:
WHEN THE BEST MAN FOR THE JOB IS A WOMAN

by

Richard A. McDonald
Lieutenant Colonel, USAF

AN ESSAY SUBMITTED TO THE FACULTY

IN

FULFILLMENT OF THE CURRICULUM

REQUIREMENT

Advisor: Doctor James A. Mowbray

MAXWELL AIR FORCE BASE, ALABAMA

May 1991

DISCLAIMER

This study represents the views of the author and does not necessarily reflect the official opinion of the Air War College or the Department of the Air Force. In accordance with Air Force Regulation 110-8, it is not copyrighted but is the property of the United States government.

Loan copies of this document may be obtained through the interlibrary loan desk of Air University Library, Maxwell Air Force Base, Alabama 36112-5564 (telephone (205) 293-7223 or DSN 493-7223).

ABSTRACT

TITLE: Women in Combat: When the Best Man for the Job Is a Woman

AUTHOR: Richard McDonald, Lieutenant Colonel, USAF

Women in the United States military are prohibited by federal law from holding combat positions in the Air Force and the Navy and by departmental regulations from holding such positions in the Army. Despite the fact that the statutes are of questionable constitutionality, their legality has not been determined by the United States Supreme Court. While a variety of arguments have been advanced to continue this discrimination, none are valid. Nevertheless, it is unlikely that Congress will act to alter the statutes in question without affirmative action by the Department of Defense. Steps should be taken immediately to open all military positions to women.

BIOGRAPHICAL SKETCH

Lieutenant Colonel Richard A. McDonald graduated from Oklahoma State University in 1970 with a Bachelor of Science degree in Mechanical and Aerospace Engineering and as a Distinguished Graduate of AFROTC. He was commissioned as a second lieutenant and served in a variety of positions in the space systems career field between 1970 and 1975. In 1975, he was selected to participate in the Air Force's Funded Legal Education Program and attended law school at the University of Oklahoma. He obtained his Juris Doctor degree with honors in 1978. He has served as an Assistant Staff Judge Advocate at Reese AFB, Texas and Headquarters United States Air Forces in Europe and as Staff Judge Advocate at Plattsburgh AFB, New York and Minot AFB, North Dakota. He is a member of the Air War College class of 1991. He is married to the former Carolyn Brewer of Midwest City, Oklahoma. They have two children, Scott and Anne.

During a heated discussion in a seminar at the United States Air Force's Air War College, a student argued that "[a former U.S. president] was a woman." That simple statement was meant to imply that the referenced individual was weak, emotional, and incapable of making reasoned, mature judgments.

Slowly but surely, American women have erased barriers that have denied them full equality with men. At least one significant barrier still stands: the right to fight in combat as part of this nation's armed forces. Successful military strategy requires the most effective employment of personnel and equipment possible. While America's armed forces must be equipped with accurate, reliable, and technologically sophisticated weapons, the most important ingredient in designing an effective strategy is the personnel who will implement that strategy. Thus, the most basic question of national military strategy becomes whether or not America's armed forces are composed of the best available people. Does this country's national security strategy make the most effective use of American resources by excluding over half the population from serving in combat positions?

This paper will discuss the present status of combat exclusion laws and policies, the current practices within the armed forces, past sexual discrimination litigation, and the full litany of arguments against allowing women access to combat roles. Finally, it will draw some conclusions and propose a resolution of the matter and a call for action to resolve the matter as soon as possible.

The Law

The focus of the controversy over whether women should serve in combat positions centers on statutes passed by the United States Congress under the powers granted it in Article I of the Constitution to "raise and support Armies," "provide and maintain a Navy," and "make Rules for the Government and Regulation of the land and naval forces."[1] In accordance with this authority, Congress has passed two statutes excluding women from combat positions in the Air Force and the Navy.

Section 8549 of Title 10 of the United States Code states: "Female members of the Air Force . . . may not be assigned to duty in aircraft engaged in combat missions." The Air Force has defined "combat missions" as those involving aircraft whose "main mission" is to deliver munitions or other "destructive materials."[2]

Section 6015 of Title 10 of the United States Code deals with naval forces and states:

> [W]omen may not be assigned to duty on vessels or in aircraft that are engaged in combat missions nor may they be assigned to other than temporary duty on vessels of the Navy except hospital ships, transports, and vessels of a similar classification not expected to be assigned combat missions.

The original version of this statute barred women from duty on all

ships.

Interestingly, Congress has passed no legislation which would prohibit the Army from using women in combat positions. This seeming oversight may be explained by the fact that when the original statutes were passed in 1948, there was a separate corps for women and Congress simply never envisioned that women might be considered for combat roles.[3] Title 10, Section 3012 of the United States Code gives the Secretary of the Army the authority to set personnel assignment and utilization policies for all soldiers and the Army has established regulations prohibiting women soldiers from occupying combat positions.[4] The Army has done so because it sees this action to be "in compliance with the intent of congress and the will of the American public" and to be consistent with the Navy and the Air Force.[5] Army policy prohibits women from engaging in direct combat activities and defines combat as using weapons against an enemy while "exposed to direct enemy fire" with a "high probability of direct physical contact" and a "substantial risk of capture."[6]

It should be noted, however, that while the original statutes dealing with the Air Force and Navy may have reflected the "intent of Congress" and the "will of the American public," there was no public debate on the issue in 1948 and no discussion in Congress about the matter. The history of these statutes reveals that they were included with other legislation solely at the "whims" of the Chairman of the House Armed Services Committee.[7]

Current Practice--Women In Combat

Despite law and policy, women in America's armed forces have engaged in combat missions in most branches of the service. Certainly the Congress which passed the combat exclusion laws and the Army hierarchy which initially imposed the restrictions noted previously would be surprised, for example, to find female crewmembers on Air Force KC-135 and C-141 aircraft and to find Army female personnel close enough to the front lines in Operation Desert Storm to be taken prisoner. In Panama, female helicopter pilots transported combat troops into areas of active hostilities.[8] Even the current Chairman of the Joint Chiefs of Staff has recognized that "[w]omen have been in combat with the armed forces of the United States."[9]

Also in spite of the law, the services have continued to redefine combat roles to allow expanded female participation in military operations. The Air Force has allowed female crewmembers in more and more aircraft, the Navy has permitted female personnel on a wider variety of ships, and the Army has continued to expand the combat service support and combat support areas available to women.[10]

As the operations in the Persian Gulf unfolded, the services' artificial distinctions as to what is and what is not "combat" became more and more meaningless. The simple fact that women have performed, and performed well, in positions that just a few years ago would certainly have been considered combat specialties indicates that the momentum of history will eventually open all military roles to women.

Sex Discrimination and the Courts

While federal courts have frequently decided issues of sex discrimination and have discussed the combat exclusion laws themselves (United States Code, Title 10, Sections 6015 and 8549), the United States Supreme Court has never decided whether or not those statutes are constitutional because the Court effectively avoided its one opportunity to do so and no cases directly challenging the statutes' constitutionality have reached the Supreme Court. A brief review of some important sexual discrimination cases will provide an insight into predicting what the Court's holding might be if a lawsuit challenging the constitutionality of the combat exclusion laws should reach the Court.

What is customarily referred to as the Equal Protection Clause of the United States Constitution is contained in Section 1 of the 14th Amendment: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Equal Protection Clause has been held to be applicable to the federal government through the Due Process Clause of the 5th Amendment.[11] As a result, persons similarly situated are to be given equal treatment under the law and the federal government may not engage in unjustifiable discrimination.[12] Since the combat exclusion laws treat individual citizens differently based solely on their gender, these laws are subject to judicial scrutiny under the Equal Protection Clause.[13]

In determining whether a particular law violates the Equal

Protection Clause or the Due Process Clause, the Court will consider: (1) the character of the classification; (2) the individual interests affected by the classification; and (3) the governmental interest purported to be served by the classification.[14] Of critical importance in trying to determine how the Court would decide the legality of the combat exclusion laws is a determination of what standard of review the Court would apply.

Many would suggest that the Court would use one of two standards of review, either a "strict scrutiny" or "rational basis" test. Application of the strict scrutiny test is more likely to result in a finding that the statute being examined is unconstitutional than is the application of the rational basis test. Predicting the Court's decision would be greatly simplified if it were certain that the Court would apply one of these two standards. However, in various cases the Court has used language indicating that it may apply any one of numerous different standards depending on the situation.[15] The Court has at various times employed the following tests for determining whether laws discriminating on the basis of sex violate the Constitution or not: (1) Is a fundamental right involved, such as the right to vote? (if so, the exclusion of a particular group must be "necessary" to promote a "compelling" governmental interest and the law will be subject to "strict scrutiny");[16] (2) Does the law bear a rational relation to a legitimate government interest?;[17] (3) Is the law "substantially related" to "important governmental objectives?";[18] or (4) Is the law needed to further a "sufficiently substantial state interest"?[19] The cynical observer could reasonably

conclude that the standard the Court would apply depends on the result that the Court wants to reach. In fact, one member of the Court has noted this tendency himself.[20] Unfortunately, because of this confusion, it is difficult, if not impossible, to discern which standard will be applied in a particular case. Nevertheless, it is interesting to examine some of the individual cases in which federal courts have wrestled with the application of various laws and regulations dealing with different treatment of American citizens because of their gender.

In the case of Crawford v. Cushman (1976), the Circuit Court of Appeals for the 2nd Circuit held that Marine Corps regulations mandating the discharge of female marines if they became pregnant violated the Constitution's guarantees of equal protection and due process. The Court of Appeals found that the Marine Corps' basis for treating pregnant personnel differently from male or female marines with other "temporary disabilities" was "irrational."[21]

The United States Supreme Court discussed the combat exclusion laws in Rostker v. Goldberg (1981) when draft age males brought suit alleging that they were being discriminated against illegally because only males were required to register for possible draft into the armed forces. The Court held that the Military Selective Service Act did not violate the Due Process Clause because Congress had acted reasonably in limiting registration to males only since females were not eligible for combat and the purpose of the Military Selective Service Act was basically to provide a pool of individuals for combat service.[22] However, since the issue of the constitutionality of the

underlying combat exclusion laws had not been specifically raised, the decision did not determine the legality of those statutes.[23] The Court took great pains to point out that in passing the Military Selective Service Act, Congress had not taken action that was the "accidental byproduct of a traditional way of thinking about women"[24] and that Congress had been thoughtful and reflective in representing the will of the American people.[25] On the contrary, in passing the combat exclusion laws, Congress apparently gave little thought to the matter and arbitrarily excluded women from combat positions.

In two federal district court cases, Kovach v. Middendorf (1976) and Owens v. Brown (1978), the courts explicitly reviewed the constitutionality of Section 6015 of Title 10. In the former, it was held that combat service exclusion did not violate the Equal Protection Clause but in the latter, decided as the Navy was proposing revisions to the statute to allow greater access to shipboard positions for women, the court refused to decide whether women should have the same rights to receive combat assignments as men.[26] The court, however, sent a warning signal to Congress by noting that the legislative background of the combat exclusion laws "tends to suggest a statutory purpose more related to the traditional way of thinking about women than to the demands of military preparedness."[27]

In Reed v. Reed (1971), the Supreme Court evaluated a state law which gave a mandatory preference to males over females as administrators of estates.[28] The Court held that classifications based on sex founded on overly broad generalizations could not withstand scrutiny under the Constitution and noted that "dissimilar

treatment" for men and women who are "similarly situated" was illegal.[29]

In Califano v. Goldfarb (1977), the Court struck down provisions of the Social Security Act which provided different benefits for widows and widowers based solely on the fact that one class was female and the other was male.[30] The Court noted that the illegal discrimination embodied in the statute was "merely the accidental byproduct of a traditional way of thinking about females."[31] Arguably, the combat exclusion laws are derived directly from the same attitude and the traditionally held view of the place of females in American society. As a result, it is likely or probable that the Court would use the analysis from Califano v. Goldfarb to invalidate those statutes.

Finally, the Court, in Frontiero v. Richardson (1973), found that Air Force regulations requiring female service members to prove that their spouses were dependent on them before they could receive increased benefits were invalid since the Air Force automatically paid such benefits to married male service members regardless of whether their spouses were dependent on them or not. In holding these regulations to be unconstitutional discrimination, the Court said that "... our Nation has had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was rationalized by an attitude of 'romantic paternalism' which, in practical effect, put women, not on a pedestal, but in a cage."[32]

For purposes of predicting what action the Court might take on a direct challenge to the combat exclusion laws, the most important

portions of the Court's decisions discuss the historical deference given to Congress by the Court, particularly in matters dealing with national security and military affairs. The Court has paid close attention to the separation of powers between the judicial and legislative branches and has been reluctant to invalidate Congressional statutes implementing powers specifically given to Congress under the Constitution. In numerous cases, the Court has refused to overturn statutes by simply deferring to the judgment of Congress.[33] Critics have alleged that the Court has hidden behind the "will of Congress" when it wished to avoid a particularly difficult question or a politically charged issue.

Clearly, it appears that the statutes excluding women from combat service are overly broad, preventing even the bravest, strongest, and most able female citizens from filling combat positions in America's armed forces. As a result, it would seem logical that the Supreme Court would overturn these laws if a case directly challenging them should reach the highest court. Although good arguments can be made that the combat exclusion laws are unconstitutional because they discriminate solely on the basis of sex without any justifiable reason for doing so, it is likely that the Supreme Court would sustain them out of deference to Congress. As noted earlier, the Court tends to choose the standard of review that it will apply in a particular case based on the result it wants to obtain. That is, when deciding to strike down a law, the Court applies a "strict scrutiny" test and in cases in which it has decided to sustain a statute, the Court applies a "rational basis" test.[34]

Although most writers and the Court itself are reluctant to discuss the fact, the Supreme Court is acutely aware of the political ramifications of its decisions and the Court would most likely find the combat exclusion laws to be constitutional. The net result of this may be that in any litigation of the issue the Court would merely hold that it must defer to the will of Congress and validate the statutes, thereby avoiding the political sensitivity of the matter and leaving any real decision to the Congress.

Combat Exclusion Laws and the American Public

The issue of whether American women should serve in combat roles in the military has been discussed for years. Many arguments against allowing women to fill such positions have been postulated, some thoughtful and reasonable, some arising from times when women were treated as mere possessions. Although some of these arguments defy categorization (and logic), they can generally be broken down into the following theories: (1) the American public generally does not want its wives, mothers, and daughters to engage in combat; (2) captured female soldiers might be tortured and sexually abused, thereby compromising the will of fellow male captives; (3) women lack the physical strength necessary for combat positions; (4) females do not have the mental toughness to handle the stresses of combat; (5) women are not aggressive enough to successfully engage in combat; (6) the realities of combat require units to live closely together and such situations would be exacerbated by "romances" between soldiers

if females were assigned to combat units; (7) the fact that women may get pregnant complicates and degrades unit effectiveness; (8) the cohesion and bonding necessary for maximum effectiveness would be adversely affected by introducing women into combat units; and, (9) that having women in combat units would generally degrade combat effectiveness.

Congress has probably been most influenced on this issue by the perception that the American public just does not want women to be in combat military units because to do so would somehow be "improper" and "offensive to the . . . dignity of womanhood."[35] This argument is basically grounded in the general historical tradition throughout the world of allowing only men to fight.[36] Some have even classified this ideal as one of the eternal truths of the ages: "[A]ncient tradition against the use of women in combat embodies the deepest wisdom of the human race."[37] On the other hand, what other nations have done and are doing with respect to this issue or for that matter, what the United States has done in the past, is basically irrelevant. American concepts of equality supported by the United States Constitution are virtually unparalleled and have evolved and broadened through the years. The will of the American people is frequently difficult to measure and some groups favor the removal of the combat exclusion laws. Surveys of female military officers indicate that the clear majority support the repeal of all such statutes and policies.[38]

Frequently, rhetoric opposing the use of women in combat indicates that America's fathers and mothers do not want their daughters to fight and die in combat. Certainly those fathers and

mothers are just as concerned about their sons and as unwilling for them to fight and die in combat.[39] Even if a majority of the American public does disapprove of allowing women to participate in combat, that fact does not make such discrimination constitutional.

The notion that females should not engage in hostilities because they might be captured and tortured thereby compromising the will of their fellow male captives is ridiculous.[40] The idea that a male prisoner may somehow be less concerned about the prospective torture of a male comrade than he would be about the possible torture of a female is repugnant.

Of the multitude of ideas advanced to explain why women should not be in combat positions, the most pervasive is that women lack the physical strength to effectively carry out combat operations. Stated simply, the argument is that "[t]he exclusion of women from front-line . . . combat is mandated by their lesser physical capabilities."[41] A former Air Force general framed the issue by claiming that the modern battlefield requires all combat troops to exhibit the "muscle structure and exertion normally associated with a defensive tackle on the Denver Bronco's football team."[42] Obviously this argument is nonsensical; even given the demise of Denver football fortunes, the vast majority of America's combat personnel do not meet the physical standards necessary to play in the National Football League. Especially considering the nature of combat duties in the Air Force and the Navy as compared to those in the Army, there is clearly a wide variety of physical skills required in the military. The argument of most who would not allow women to serve in combat is that the

"average" woman does not have anywhere near the upper body strength of the "average" man.[43] Even if true, that theory is completely irrelevant in deciding whether or not to remove the combat exclusion laws. The correct issue is not whether the average woman is stronger or weaker than the average man but whether any woman is stronger than the weakest man allowed to fill a combat position. If there are any women stronger than any men (and of course there are), then the question is simply which women and which men are strong enough to handle combat positions without the gratuitous exclusion of an entire gender.[44] This issue can be settled simply by establishing minimum physical standards for combat positions and requiring that each individual, male and female, meet those standards before being placed in such a position.[45] As General Ira C. Eaker put it, "Some women and some men are physically unfit for some military tasks."[46] The objective for our military leaders in deciding who should fill combat units should be to determine which are the best people, male and female.

In a similar vein, opponents of allowing women to engage in combat argue that women do not possess the mental toughness required to cope with the stresses of the modern battlefield. On the contrary, it is arguable that women generally handle pressure better than men. Studies have shown that women have performed at least as well as men under the stress of military field exercises and certainly some women have ably filled positions, such as fire fighters and police officers, which place tremendous mental and physical demands on an individual.[47] Regardless of which generalization is true, the previous analysis

concerning physical strength also applies to this issue. Women are individuals as are men. Some women certainly can deal with stress better than some men.[48] Therefore, it is unnecessary to restrict all women from combat because of a generalized belief that women would not react under combat conditions as well as men. Anyone objectively considering the matter would likely agree that he or she has known women better able to handle great stress than some men. Such women should have the opportunity to serve in combat units.

Along the same lines, some critics of proposals to repeal combat exclusion laws and policies assert that women do not have the aggressiveness needed for effective combat operations. Assuming that, as many have argued, "most males [are] . . . more aggressive than most females," there must still be some females who are more aggressive than some males.[49] Accepting that some degree of aggressiveness is desirable for success in combat, the trait is not gender-specific and some women can clearly meet any minimal standard.[50]

A somewhat nebulous argument against repeal of the combat exclusion laws is that allowing men and women to live and work together in actual combat conditions would create insurmountable problems caused by romantic entanglements.[51] The concern that romantic or sexual relationships will invariably develop and hinder subsequent combat operations may have some validity but "it takes two to tango" and <u>all</u> women should not be restricted from combat because of what some females and males might or might not do.

Obviously, as opponents of allowing women in combat (and of women in the military in general) frequently point out, only women

become pregnant.[52] As a result the argument is made that women should not be assigned to combat organizations since they may become pregnant and have to be taken out of the unit, degrading unit effectiveness. However, these critics have failed to consider the fact that statistics clearly show that male service members lose more time from duty than do female service members, pregnancies included.[53] Whether a combat soldier is withdrawn from a unit because she is pregnant or because of a bleeding ulcer, the unit is adversely affected. Studies, including one conducted by the Government Accounting Office, have consistently concluded that women in the military lose only about half as much time from duty as do their male counterparts, including the time women lose from duty because of pregnancies.[54] Therefore, it makes more sense statistically to assign a female who might become pregnant to a combat unit than a male.

Additionally, it is alleged that allowing women to participate in combat will damage unit morale and the normal cohesion of males that takes place under hostile fire.[55] Basically, this argument likens combat units to sports teams and implies that the natural bonding of males in a stressful environment is damaged if females are added to the "team." This allegation is based on pure conjecture and it is equally likely that males and females in the same combat unit, just as within noncombat organizations or civilian businesses, will form bonds as strong as those in all-male units.

"Their emotions are unstable and their reactions uncertain."[56] No one would be surprised if this quote referred to women and their potential in combat roles. However, the quote was not made by those

who do not want women to serve in combat; the quote is from an Army War College report completed in 1936 entitled "The Use of Negro Manpower" which explains why extensive racial integration of America's armed forces would damage the military's combat effectiveness.[57] This report supposedly corroborated the widely held feeling that integration of the services would seriously degrade the military's ability to fight.[58] Most of the attitudes and arguments against integrating black men into America's military are being duplicated by those who are opposed to integrating women into America's combat organizations.[59] American public opinion in years past opposed the full integration of blacks into the military and into schools and other facilities, and certainly would have been strongly opposed to the idea that the Chairman of the Joint Chiefs of Staff would someday be a black American.[60] Fortunately, the nation has stepped beyond those aspects of racial prejudice and it should now do the same with its unjustified discrimination based on sex.

A Call for Action

Most of the arguments against having women in combat miss the key point. The only valid issue is how assigning women to combat units influences the combat effectiveness of those organizations.[61] Common sense and justice require more than a gut level decision that the presence of women in combat will degrade the effectiveness of particular units. National leaders must determine whether or not the sex of an individual should be an absolute bar to putting that

individual in a combat unit. These leaders should carefully consider, for example, that there certainly is or will be a female student pilot in the Air Force who is more professional, more aggressive, and who has "better hands" than at least one male fighter pilot. Does it make any sense for our national defense to put the second best pilot in the cockpit? Is it logical that a woman may legally be elected President of the United States or appointed as Secretary of Defense and make decisions to send male troops into battle but that a woman may not legally be in those combat units? Especially with the large force cuts expected in the near future in all branches of the service, the American people should want the best person in each and every military position, regardless of that person's gender.

Without a pending case to challenge the constitutionality of the combat exclusion statutes and policies, the United States Supreme Court cannot do anything to correct the current situation. Because of the politics involved, it is unlikely that there will be any strong movement either from the President or Congress to change existing practices. Politicians are unlikely to oppose what they perceive as the will of their constituents--that women be excluded from combat--regardless of the impact this inaction has on the rights of women.[62] In fact, "the primary resistance to the participation of American women in combat during World War II, and before, and since, has been found in Congress."[63] As a result, there will probably be no progress on this issue unless the Department of Defense and the service chiefs take the initiative. This is an issue whose time has come. In 1973, the Department of Defense drafted provisions for

repeal of the combat exclusion laws and in 1978 and 1979, the Department again proposed repeal of these statutes to Congress but on each occasion there was no support for repeal from legislators who felt it politically unwise to do so.[64]

Barriers of sexual discrimination have fallen slowly in American society and within the military. Prior to 1942, women were allowed to serve only in the nursing corps. In 1942, the Women's Army Corps was created and in 1948, women were given permanent status in the forces even though the female portion of the force was capped at two percent. In 1970, the first female general was selected. In 1972, the first female Reserve Officer Training Corps cadet was admitted and in 1976, female cadets were allowed to enter the nation's service academies.[65] The recent events in the Persian Gulf indicate the continued blurring of combat and noncombat roles. Full equality among men and women has not arrived in the military but its time is coming. It is not a question of if it will occur but when.

America needs the best person, male or female, in each position. There is no need to compromise physical standards to accommodate women. Those of either sex who do not meet realistic physical criteria should not be selected for combat positions; those who do should be eligible irrespective of their sex. The exclusion has been aimed at women generally; women, like other candidates for military service, need to be treated as individuals. "[S]tatutory distinctions between the sexes often have the effect of invidiously relegating the entire class of females to inferior legal status without regard to the actual capabilities of its individual

members."[66] Some can shoulder the burden of grueling physical combat; others cannot. The issue is not whether the best potential combat infantrywoman is better than the best combat infantryman; the issue is whether the best potential combat infantrywoman is better than the worst combat infantryman.

The present treatment of women excludes over half of America's citizens from a fundamental civic obligation, the duty to help defend their country.[67] "[S]enior women officers . . . wish to do away with . . . the categorical exclusion of women from direct combat roles. They see the exclusion as somehow precluding women from full citizenship."[68]

The heart of the matter is not whether women have or have not served in combat in the past. The point is not whether the majority of the American public wants them to or not. Even in a democracy in which the majority generally rules, the wishes of the majority must give way to the rights of individuals. The crux of the matter is whether or not women should have the right to fight for their country. The question should not be decided by the feelings of a 65 year old congressman, nor the desires of his constituents, male or female. The question is: What are the rights of the 22 year old female Air Force officer who wants to fly fighters and the 19 year old female Marine who desires to be in a combat unit?

Either the American system treats all men and women equally or it does not. The chance of gender at birth should not be the deciding factor in determining how far desire and initiative can take a person. For too long and in many ways this nation has treated women as

possessions. Removal of the combat exclusion policies and laws would be one more step in freeing the chains of servitude in which archaic laws and ideas have bound women.

It is time for the Department of Defense and the Chairman of the Joint Chiefs of Staff to look at this issue carefully and to step out and do the right thing. Forget laws and emotions for the moment and decide what is the just and moral thing to do. This is not the time to look to Congress and the Executive branch for leadership. No legislation is needed to change the policies restricting women in the Army from combat positions; that change can and should be made today. Thereafter the Department of Defense needs to publicly urge Congress to repeal the restrictions on naval and air forces.

If the best person for the job is a woman, she ought to be flying the fighter or driving the tank. The United States military needs to abandon policies that perpetuate sexual discrimination. America needs and deserves the best people in the right places.

> That right [to defend the nation] belongs to all; it shouldn't be limited by gender. In denying physically qualified female volunteers combat roles, the Army denies women one of the rights of full citizenship--the right to defend a way of life.[69]

NOTES

1. Rostker v. Goldberg, 453 U.S. 57 (1981), p. 59.

2. Robert K. Landers, "Should Women Be Allowed in Combat?," Editorial Research Reports, 13 October 1989, p. 572.

3. Thomas Galvin and William Weiss, "Proposal for Women in Combat Is Running into Flak on Hill," CQ Weekly Report, 10 March 1990, p. 762.

4. Richard D. Hooker, Jr., "Affirmative Action and Combat Exclusion: Gender Roles in the US Army," Parameters, December 1989, pp. 36-37.

5. Ibid., p. 37; U.S., Congress, House, Committee on Armed Services, Women in the Military, Hearing before the Military Personnel and Compensation Subcommittee of the House Committee on Armed Services. 101st Cong., 2d sess., 1990, p. 26.

6. Charles Moskos, "Army Women: A Look at the Life, the Sentiments, and the Aspirations--Including, for Some, Combat--of Women in the U.S. Army," The Atlantic, August 1990, p. 72.

7. Major General Jeanne Holm, Women in the Military: An Unfinished Revolution, (Novato, CA: Presido Press, 1982), p. 395.

8. Moskos, "Army Women: A Look at the Life, the Sentiments, and the Aspirations--Including, for Some, Combat--of Women in the U.S. Army," p. 71.

9. General Colin Powell, "SDI, Stealth, Women in Combat," Defense, September-October 1990, p. 17.

10. George F. Gilder, Men and Marriage, (Gretna: Pelican Publishing Co., 1986), p. 128; Charlie Schill, "Poll Finds Female Officers Want Combat Option," Air Force Times, 21 August 1989, p. 12.

11. Bolling v. Sharp, 347 U.S. 497 (1954); Rostker, p. 89.

12. Karla R. Kelly, "The Exclusion of Women from Combat: Withstanding the Challenge," JAG Journal, Summer 1984, p. 87; Schlesinger v. Ballard, 419 U.S. 498 (1975), p. 510.

13. Reed v. Reed, 404 U.S. 71 (1971), p. 75.

14. Dunn v. Blumstein, 405 U.S. 330 (1972), p. 335.

15. Kelly, "The Exclusion of Women from Combat: Withstanding the Challenge," p. 87.

16. Crawford v. Cushman, 531 F. 2d 1114 (2nd Cir. 1976), p. 1123; Dunn, pp. 337 and 342; Frontiero v. Richardson, 411 U.S. 677 (1973), p. 688.

17. Crawford, p. 1123; Kelly, "The Exclusion of Women from Combat: Withstanding the Challenge," p. 87

18. Craig v. Boren, 429 U.S. 190 (1976), p. 197; Hooker, "Affirmative Action and Combat Exclusion: Gender Roles in the US Army," p. 41; Kelly, "The Exclusion of Women from Combat: Withstanding the Challenge," p. 88.

19. Dunn, p. 343.

20. Craig, p. 212.

21. Bolling, p. 497; Crawford, pp. 1121-1122.

22. Rostker, pp. 76 and 83.

23. Landers, "Should Women Be Allowed in Combat?," p. 571; Rostker, pp. 83 and 87.

24. Rostker, pp. 64-72.

25. Rostker, pp. 72 and 77.

26. Kovach v. Middendorf, 424 F. Supp. 72 (D. Del. 1976), p. 79; Owens v. Brown, 455 F. Supp. 291 (D. D.C. 1978), p. 293.

27. Owens, p. 306.

28. Reed, pp. 72-73.

29. Frontiero, p. 683; Schlesinger, p. 507.

30. Califano v. Goldfarb, 450 U.S. 199 (1977), p. 199.

31. Califano, p. 223.

32. Frontiero, p. 684.

33. Rostker, pp. 64-72.

34. Craig, p. 212.

35. Major G.R. Bettle, "Use of Women as Warriors Threatens Our Society," Marine Corps Gazette, September 1978, p. 46; Landers, "Should Women Be Allowed in Combat?," p. 571; Nancy H. Loring, ed., Women in the United States Armed Forces: Progress and Barriers in the 1980s, (Chicago: Inter-University Seminar on Armed Forces and Society, 1984), p. 39; Rostker, p. 77.

36. Galvin and Weiss, "Proposals for Women in Combat Is Running into Flak on Hill," p. 762; Landers, "Should Women Be Allowed in Combat?," p. 575.

37. Gilder, Men and Marriage, p. 135.

38. Schill, "Poll Finds Female Officers Want Combat Option," p. 9.

39. Julie Bird, "Women and Combat: Special Report," Air Force Times, 20 March 1989, p. 69; William Proxmire and Major General John K. Singlaub, "Should Women Be Used in Military Combat: Pro & Con," American Legion, September 1978, p. 30.

40. Moskos, "Army Women: A Look at the Life, the Sentiments, and the Aspirations--Including, for Some, Combat--of Women in the U.S. Army," p. 76.

41. Nancy L. Goldman, ed., Female Soldiers--Combatants or Noncombatants?: Historical and Contemporary Perspectives, (Westport, CT: Greenwood Press, 1982), p. 248.

42. Proxmire and Singlaub, "Should Women Be Used in Military Combat: Pro & Con," p. 31.

43. Landers, "Should Women Be Allowed in Combat?," p. 578.

44. Landers, "Should Women Be Allowed in Combat?," p. 579; U.S. Congress, House, Women in the Military, p. 7.

45. Goldman, Female Soldiers--Combatants or Noncombatants?: Historical and Contemporary Perspectives, p. 271.

46. Lieutenant General Ira C. Eaker, "Combat Duty for Women," Air Force Times, 10 April 1978, p. 18.

47. Goldman, Female Soldiers--Combatants or Noncombatants?: Historical and Contemporary Perspectives, p. 275.; Proxmire and Singlaub, "Should Women Be Used in Military Combat: Pro & Con," p. 30.

48. Lieutenant Kenneth A. Siegel, "Women in Combat: When, Not If," Army, August 1975, p. 9.

49. Gilder, Men and Marriage, p. 132; Moskos, "Army Women: A Look at the Life, the Sentiments, and the Aspirations--Including, for Some, Combat--of Women in the U.S. Army," p. 76; "Soldier Boys, Soldier Girls," The New Republic, 19 February 1990, p. 8.

50. Landers, "Should Women Be Allowed in Combat," p. 579.

51. Ibid., p. 578; Rex E. Lee, A Lawyer Looks at the Equal Rights Amendment, (Provo, UT: Brigham Young University Press, 1980), p. 59; "Soldier Boys, Soldier Girls," p. 8.

52. Goldman, Female Soldiers--Combatants or Noncombatants?: Historical and Contemporary Perspectives, pp. 251 and 272; Landers, "Should Women Be Allowed in Combat," p. 580.

53. Holm, Women in the Military: An Unfinished Revolution, p. 257; Proxmire and Singlaub, "Should Women Be Used in Military Combat: Pro & Con," p. 30.

54. Holm, Women in the Military: An Unfinished Revolution, pp. 83-85, 303, and 384; Proxmire and Singlaub, "Should Women Be Used in Military Combat: Pro & Con," p. 30.

55. Landers, "Should Women Be Allowed in Combat," p. 581; "Soldier Boys, Soldier Girls," p. 8; Technical Cooperation Program, Subcommittee on Non-Atomic Research and Development, Women in Combat, (Washington, 1988), p. 7.

56. Richard J. Stillman, II, Integration of the Negro in the U.S. Armed Forces, (New York: Praeger, 1968), pp. 19-20.

57. Robert K. Fullinwider, ed., Conscripts and Volunteers: Military Requirements, Social Justice, and the All-Volunteer Force, (Totowa, NJ: Rowman & Allanheld, 1983), p. 204; Stillman, Integration of the Negro in the U.S. Armed Forces, p. 43 and 55.

58. Ibid., p. 20.

59. Fullinwider, Conscripts and Volunteers: Military Requirements, Social Justice, and the All-Volunteer Force, p. 204.

60. Ibid., pp. 203-204; Robert W. Mullen, Blacks in America's Wars: The Shift in Attitudes from the Revolutionary War to Vietnam, (New York: Monad Press, 1973), pp. 41 and 51; Powell, "SDI, Stealth, Women in Combat," p. 17.

61. Bird, "Women and Combat: Special Report," p. 13; Landers, "Should Women Be Allowed in Combat?," p. 571; "Soldier Boys, Soldier Girls," p. 8.

62. Landers, "Should Women Be Allowed in Combat," p. 582.

63. Goldman, Female Soldiers--Combatants or Noncombatants?: Historical and Contemporary Perspectives, p. 219.

64. Holm, Women in the Military: An Unfinished Revolution, pp. 335 and 338-339.

65. Moskos, "Army Women: A Look at the Life, the Sentiments, and the Aspirations--Including, for Some, Combat--of Women in the U.S. Army," p. 72.

66. Frontiero, pp. 686-687.

67. Rostker, p. 86.

68. Fullinwider, Conscripts and Volunteers: Military Requirements, Social Justice, and the All-Volunteer Force, p. 215; Landers, "Should Women Be Allowed in Combat?," p. 570; Moskos, "Army Women: A Look at the Life, the Sentiments, and the Aspirations--Including, for Some, Combat--of Women in the U.S. Army," p. 78.

69. "A Role in Combat Is a Woman's Right;" Current News, 20 October 1982, Part 2, p. 3-E.

BIBLIOGRAPHY

Bettle, Major G.R. "Use of Women as Warriors Threatens Our Society." Marine Corps Gazette, September 1978, pp. 45-51.

Bird, Julie. "Women and Combat: Special Report." Air Force Times, 20 March 1989, pp. 12-13+.

Bolling v. Sharp, 347 U.S. 497 (1954).

Califano v. Goldfarb, 450 U.S. 199 (1977).

Craig v. Boren, 429 U.S. 190 (1976).

Crawford v. Cushman, 531 F. 2d 1114 (2nd Cir. 1976).

Dunn v. Blumstein, 405 U.S. 330 (1972).

Eaker, Lieutenant General Ira C. "Combat Duty for Women." Air Force Times, 10 April 1978, pp. 17-18.

Frontiero v. Richardson, 411 U.S. 677 (1973).

Fullinwider, Robert K., ed. Conscripts and Volunteers: Military Requirements, Social Justice, and the All-Volunteer Force. Totowa, NJ: Rowman & Allanheld, 1983.

Galvin, Thomas and Weiss, William. "Proposal for Women in Combat Is Running into Flak on Hill." CQ Weekly Report, 10 March 1990, pp. 762-763.

Gilder, George F. Men and Marriage. Gretna: Pelican Publishing Co., 1986.

Goldman, Nancy L., ed. Female Soldiers--Combatants or Noncombatants?: Historical and Contemporary Perspectives. Westport, CT: Greenwood Press, 1982.

Holm, Major General Jeanne. Women in the Military: An Unfinished Revolution. Novato, CA: Presido Press, 1982.

Hooker, Richard D., Jr. "Affirmative Action and Combat Exclusion: Gender Roles in the US Army." Parameters, December 1989, pp. 36-50.

Kelly, Karla R. "The Exclusion of Women from Combat: Withstanding the Challenge." JAG Journal, Summer 1984, pp. 77-108.

Kovach v. Middendorf, 424 F. Supp. 72 (D. Del. 1976).

Landers, Robert K. "Should Women Be Allowed in Combat?" Editorial Research Reports, 13 October 1989, pp. 570-582.

Lee, Rex E. A Lawyer Looks at the Equal Rights Amendment. Provo, UT: Brigham Young University Press, 1980.

Loring, Nancy H., ed. Women in the United States Armed Forces: Progress and Barriers in the 1980s. Chicago: Inter-University Seminar on Armed Forces and Society, 1984.

Moskos, Charles. "Army Women: A Look at the Life, the Sentiments, and the Aspirations--Including, for Some, Combat--of Women in the U.S. Army." The Atlantic, August 1990, pp. 70-78.

Mullen, Robert W. Blacks in America's Wars: The Shift in Attitudes from the Revolutionary War to Vietnam. New York: Monad Press, 1973.

Owens v. Brown, 455 F. Supp. 291 (D. D.C. 1978).

Powell, General Colin. "SDI, Stealth, Women in Combat." [Questions and answers at the National Press Club on 22 June 1990] Defense, September-October 1990, pp. 16-18.

Proxmire, William and Singlaub, Major General John K. "Should Women Be Used in Military Combat: Pro & Con." American Legion, September 1978, pp. 30-31.

Reed v. Reed, 404 U.S. 71 (1971).

"A Role in Combat Is a Woman's Right." Current News; 20 October 1982, Part 2, p. 3-E.

Rostker v. Goldberg, 453 U.S. 57 (1981).

Schill, Charlie. "Poll Finds Female Officers Want Combat Option." Air Force Times, 21 August 1989, p. 9+.

Schlesinger v. Ballard, 419 U.S. 498 (1975).

Siegel, Lieutenant Kenneth A. "Women in Combat: When, Not If." Army, August 1975, pp. 8-9.

"Soldier Boys, Soldier Girls." The New Republic, 19 February 1990, pp. 7-9.

Stillman, Richard J., II. Integration of the Negro in the U.S. Armed Forces. New York: Praeger, 1968.

Technical Cooperation Program. Subcommittee on Non-Atomic Research and Development. Women in Combat. Washington, February 1988.

U.S. Congress. House. Committee on Armed Services. Women in the Military. Hearing before the Military Personnel and Compensation Subcommittee of the House Committee on Armed Services, 101st Cong., 2nd sess., 1990.